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| APPLICATION NO.                                                                            | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--------------------------------------------------------------------------------------------|-------------|----------------------|---------------------|------------------|
| 10/776,017                                                                                 | 02/10/2004  | Jon C. Alexander     | 076565-0135         | 9075             |
| 26371                                                                                      | 7590        | 04/04/2006           | EXAMINER            |                  |
| FOLEY & LARDNER LLP<br>777 EAST WISCONSIN AVENUE<br>SUITE 3800<br>MILWAUKEE, WI 53202-5308 |             |                      | MOHANDESI, JILA M   |                  |
|                                                                                            |             | ART UNIT             |                     | PAPER NUMBER     |
|                                                                                            |             |                      |                     | 3728             |

DATE MAILED: 04/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                              |                  |
|------------------------------|------------------------------|------------------|
| <b>Office Action Summary</b> | Application No.              | Applicant(s)     |
|                              | 10/776,017                   | ALEXANDER ET AL. |
|                              | Examiner<br>Jila M. Mohandes | Art Unit<br>3728 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 10 February 2004.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-41 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-41 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|                                                                                                                                                         |                                                                                         |
|---------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                                             | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>05-13-04, 06-07-04</u> . | 6) <input type="checkbox"/> Other: _____                                                |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-7,11, 12 and 18-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Hara (5,139,165). Hara '165 discloses a hermetic storage system for containing articles comprising: a flexible container (1) having a first member having a first connector (12) surrounding an aperture; and an impermeable second member having a second connector (10); wherein the first connector includes one of a groove and a key and the second connector includes the other one of the groove and the key; wherein the groove includes a first peripheral wall and a second peripheral wall, wherein the first peripheral wall includes an indentation and protrusion (See Figures 7, 8(a) and 8(b) embodiments); wherein the key has a width greater than the distance between the protrusion and the second peripheral wall; wherein the first connector and the second connector may be releasably engaged to provide a hermetic seal; and wherein the second peripheral wall is configured to flex in response to the key passing between the protrusion and the second peripheral wall. See Figures 1-16 embodiments and column 2, lines 1-4 and lines 61-66.

With respect to claim 7, see Figure 1-2 embodiment where the second member is pivotable coupled to the container. /

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hara '165.

With respect to claim 8, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the second member independent from the first member, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

With respect to claim 9 and the shape of the container, it would have been an obvious matter of design choice to modify the shape of the container, since such a modification would have involved a mere change in the shape of a component which is only ornamental in function. A change in shape is generally recognized as being within

the level of ordinary skill in the art and will not change the function of the container. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

6. Claims 1-11, 12 and 18-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Armstrong (5,366,104) in view of Luburic (Pub. No. US 2002/0148846). Armstrong '104 discloses a hermetic storage system for containing wipes comprising: a flexible container (11) having a first member having a first connector (19) surrounding an aperture; and an impermeable second member (12) having a second a second connector (27); wherein the first connector includes one of a groove and a key and the second connector includes the other one of the groove and the key; wherein the groove includes a first peripheral wall and a second peripheral wall, at least one of the first peripheral wall and the second peripheral wall being flexible and wherein the first peripheral wall includes an indentation and protrusion (see Figures 7-9 embodiments); and wherein the first connector and the second connector may be releasably engaged to provide a hermetic seal. See Figures 1-2 and 7-9 embodiments and column 2, lines 61-67 and column 3, lines 20-38. Armstrong '104 does not appear to teach the key to have a width greater than the distance between the protrusion and the second peripheral wall of the groove and at least one of the first peripheral wall and the second peripheral wall configured to flex in response to the key passing between the protrusion and the second peripheral wall. Luburic discloses a hermetic storage system where the key has a width greater than the distance between the protrusion and the second peripheral wall of the groove and at least one of the first peripheral wall and the second peripheral wall configured to flex in response to the key passing between

the protrusion and the peripheral wall for easier and tighter snapping action to provide a tighter hermetic seal (See Figures 6 and 7 embodiments and paragraph 0031).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a key and groove arrangement with the key having a width greater than the distance between the protrusion and at least one of the first peripheral wall and the second peripheral wall configured to flex in response to the key passing between the protrusion to the container of Armstrong '104 as taught by Luburic to provided a better and tighter hermetic seal when the lid is closed on the body container.

With respect to claims 8 and 38, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the second member independent from the first member, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

With respect to claims 9 and the shape of the container, it would have been an obvious matter of design choice to modify the shape of the container, since such a modification would have involved a mere change in the shape of a component which is only ornamental in function. A change in shape is generally recognized as being within the level of ordinary skill in the art and will not change the function of the container. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

With respect to claims 22 and 23, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

7. Claims 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Hara '165 in view of Ishikawa et al. (5,699,912). Hara '165 as described above discloses all the limitations of the claims except for the second member defining a second aperture and a third member releasably engaging with the second member to form a continuous hermetic seal around the second aperture. Ishikawa '912 discloses a hermetic storage system for containing wipes where the second member defining a second aperture and a third member releasably engaging with the second member to form a continuous hermetic seal around the second aperture for allowing the wipes to be individually picked out and maintaining the remaining wipes in a sterilized condition. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the second member of Hara '165 with a second aperture and a third member releasably engaging with the second member to form a continuous hermetic seal around the second aperture as taught by Ishikawa '912 for allowing the wipes to be individually picked out and maintaining the remaining wipes in a sterilized condition.

8. Claims 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over the above references as applied to claim 1 above, and further in view of Ishikawa et al. (5,699,912). Armstrong '104 as modified above discloses all the limitations of the claims except for the second member defining a second aperture and a third member

releasably engaging with the second member to form a continuous hermetic seal around the second aperture. Ishikawa '912 discloses a hermetic storage system for containing wipes where the second member defining a second aperture and a third member releasably engaging with the second member to form a continuous hermetic seal around the second aperture for allowing the wipes to be individually picked out and maintaining the remaining wipes in a sterilized condition. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the second member of Armstrong '104 with a second aperture and a third member releasably engaging with the second member to form a continuous hermetic seal around the second aperture as taught by Ishikawa '912 for allowing the wipes to be individually picked out and maintaining the remaining wipes in a sterilized condition.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shown are hermetic storage systems analogous to applicant's instant invention.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jila M. Mohandesu whose telephone number is (571) 272-4558. The examiner can normally be reached on Monday-Friday 7:30-4:00 (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3728

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jila M Mohandesi  
Primary Examiner  
Art Unit 3728

JMM  
March 29, 2006